Office - Supreme Court, U.S.
FILED
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(3)

No. 83-2032

In the Supreme Court of the United States

OCTOBER TERM, 1984

IMMIGRATION AND NATURALIZATION SERVICE, PETITIONER

v.

BERNARDO RIOS PINEDA AND
ESTARNILADA RIOS-PINEDA DE RIOS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED
JUNE 11, 1984
CERTIORARI GRANTED DECEMBER 3, 1984

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RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CASE NO. 82-1894

APPEAL FROM PETITION FOR REVIEW
OF ORDER OF IMMIGRATION AND
NATURALIZATION SERVICE

BERNARDO RIOS/PINEDA
ESTARNILADA RIOS/PINEDA DE RIOS,
PETITIONERS,

vs.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT.

Date	Filings—Proceedings
1982	
July 28	Docketed case
July 28	Petition for Review of Order of INS w/service (1)
July 28	BRIEFING SCHEDULE: Record due 8/19/82, opening brief & apndx due 9/28/82, DR (agency) due 9/28/82, responsive brief due 10/28/82, reply brief due 11/11/82.
Aug. 3	APPEARANCE FOR PETITIONER (2)
Aug. 23	APPEARANCE FOR APPELLEE. (3)
Sept. 29	MOTION of petitioner for extension of time to file brief—MOTION DENIED on 10/6/82. (4) cj
Nov. 1	*BRIEF PETITIONER* w/ser 10/29 5 copies (5) mm
Nov. 22	APPEARANCE for respondent. (6)
Nov. 19	*BRIEF APPELLEE* w/ser. 11/17 15 copies. (7) rh.
Nov. 24	TO SCREENING
Dec. 13	Received aplees. statement of issues and list of authorities.

Dec. 27	*REPLY Brief* w/ser. 12/21 5 copies. (Two more copies) (8) rh.
1983	
Feb. 18	Transferred to March session.
Mar. 16	ARGUED AND SUBMITTED TO JUDGES Heaney, Fagg & Hanson. Roman de la Campa counsel for appellant. Daniel Fromstein counsel for appellee. Recorded.
Nov. 9	OPINION BY HEANEY (PUBLISHED) 720 F.2d 529 (1983) (9)
Nov. 9	JUDGMENT: Decision of Board is reversed and remanded in accordance with opinion (10)
Nov. 21	MOTION OF RESPONDENT for ext. of time in which to file petition for rehearing. w/service (11)
Nov. 25	APPELLANT'S STATEMENT of costs w/service. (12)
Nov. 30	PETITIONER'S RESISTANCE to motion for stay of mandate and to extend time for filing petition for rehearing w/service. (13)
Dec. 1	RESPONDENT'S OBJECTIONS to PETITIONER'S BILL OF COSTS w/service (14)
Dec. 5	ORDER: RESPONDENT is granted to and including 12/23/83 to files petition for rehearing. (15)
10/7/82	5 copies of Administrative Record
Dec. 8	ORDER: PETITIONER'S resistance to respondent's motion for extension of time to file a petition for rehearing stay of mandate is denied. (16) eh
Dec. 27	RESPONDENT'S PETITION for rehearing with suggestion for rehearing en banc w/service. (17)
1984	
Jan. 13	ORDER: The Court, having considered respondent's petition for rehearing and suggestions for rehearing en banc and being now fully advised in the premises, hereby orders the petition for rehearing and suggestions for rehearing en banc denied. (18)

Jan. 24	CERTIFIED COPIES OF JUDGMENT SENT TO COUNSEL.
Jan. 24	ORDER: COUNSEL for petitions shall recover the sum of $108.00 for briefs. It is further ordered by the Court that the request for reimbursement of mileage is denied. (19)
April 9	Letter indicating that an extension of time for filing a petition for writ of certiorari has been granted to and including 6/11/84. (20) cg
June 28	NOTICE OF FILING of petition for writ of certiorari to Supreme Court as Case No. 83-2032, dated June 11, 1984. (21) cg
Dec. 6	CERTIFIED COPY OF ORDER of Supreme Court granting certiorari. (22) cg

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CASE NO. 80-1619

APPEAL FROM PETITION FOR REVIEW OF ORDER OF IMMIGRATION & NATURALIZATION SERVICE

BERNARDO RIOS/PINEDA, A22 733 395, HUSBAND,
ESTARNILADA RIOS/PINEDA DE RIOS A22 733 397, WIFE,
PETITIONERS,

vs.

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
IMMIGRATION AND NATURALIZATION SERVICES,
OMAHA, NEBRASKA, RESPONDENT.

Date	Filings—Proceedings
1980	
July 16	Docketed Case
July 16	Petition for Review of Order of INS w/service (1)
July 21	APPEARANCE petitioners (2)
Aug. 4	APPEARANCE respondents (3)
Sept. 25	BRIEFING SCHEDULE: Brief aplnt due 10/6/80, brief aplee due 11/5/80.
Nov. 5	REV. BRIEFING SCHEDULE: Brief aplnt due 12/1/80, brief aplee due 12/30/80
Dec. 1	*Brief Petitioner* 11/29 w/serv 5 copies. (Auth to fol) (4)
Dec. 31	*Brief respondent.* w/ser. 5 copies. (Rev. State. of Is.) (5)
Dec. 31	Motion for Summary Affirmance and for Vacation of Statutory Stay. (6)
Dec. 31	Motion Suggesting Sanctions for Submission of Frivolous Petition for Review. (7)
Dec. 31	Appearance Respondent Immg. & Nat. (8)
1981	
Jan. 7	SCREENING

Jan. 14	RESISTANCE of petitioners to motion for summary affirmance and for vacation of statutory stay and RESISTANCE to motion suggesting sanctions for submission of frivolous petition for review. (9)
Jan. 28	LAW CLERK MEMO.
Feb. 9	ORDER: Respondents' motion for summary affirmance and for vacation of statutory stay is denied. Respondents' motion suggesting sanction is denied. Clerk of this Court directed to set case down for argument and submission on the merits at the March 1981 Session. (10)
Feb. 17	Transferred to March session.
Mar. 11	PETITIONERS' MOTION for partial payment of expenses. (11)
Mar. 11	ARGUED AND SUBMITTED TO Judges Heaney, Henley, McMillian. Roman de la Campa for aplnt; Daniel E. Fromstein, DJ for aplee (Recorded)
Aug. 25	TWO VOL. ADMINISTRATIVE RECORD OF THE IMMIGRATION & NAT. SERVICE (with three copies of each volume).
Mar. 16	Received 4 copies of 3/2/81 per curiam decision of the Supreme Court in *INS* v. *Wang* (No. 80-485). (12)
1982	
Mar. 12	ORDER BY HEANEY (PUBLISHED) (13)
Mar. 12	JUDGMENT: DECISION of Board of Immigration Appeals reversed and remanded. (14)
Mar. 25	RESPONDENT'S MOTION for an extension of time for filing a petition for rehearing and a stay of mandate - with service. (15)
April 1	ORDER: Respondent's motion for 30 days extension to file petition for rehearing & staying issuance of mandate is granted. (16)
Apr. 5	PENRS' BILL of Costs. (w/service) (17)
Apr. 19	RESPONDENTS' OBJECTIONS to Appellant's bill of costs - with service. (18)
May 4	CERTIFIED COPIES OF JUDGMENT SENT TO COUNSEL.

Aug. 16 ORDER: PETITIONERS to recover the sum of $367.50 for costs from respondent. (19)

No. 82-1894

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BERNARDO RIOS-PINEDA, ESTARNILDA RIOS-PINEDA,
PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT

PETITION FOR REVIEW OF ORDER OF
THE BOARD OF IMMIGRATION APPEALS

BRIEF FOR THE PETITIONERS

STATEMENT OF THE ISSUE

Was the Board of Immigration Appeals acting properly when disobeying the Order of this Court by improperly denying the Motion to Reopen filed by Petitioners?

STATEMENT OF THE CASE

This case was before the Board of Immigration Appeals (BIA) on remand from a decision of the Eighth Circuit Court of Appeals dated March 12, 1982, ordering the Board to allow the Petitioners 60 days in which to properly file a Motion to Reopen to apply for suspension of deportation. The Petitioners have submitted a Motion to Reopen. The Motion was denied and the Board's Order of May 30, 1980 was reaffirmed.

In a decision dated December 12, 1978, the Immigration Judge found the Petitioners deportable on their own admissions to having entered without inspection on May 1, 1974. He further refused to accept the male Petitioner's application for suspension of deportation for failure to establish 7 years of continuous physical presence, and denied both Petitioners' requests for voluntary departure in the exercise of discretion. An appeal from Petitioners was dismissed by

the Board on May 30, 1980. The Petitioners filed a Petition for review of the Board's decision on July 16, 1980. The Court remanded the record because the Petitioners acquired 7 years of physical presence during the pendency of the appeal.

Petitioners by Certified Mail on May 6, 1982 filed a Motion to Reopen simultaneously before the District Director in Omaha, Nebraska, the U.S. Board of Immigration Appeals in Washington, D.C. and the U.S. Immigration Judge in Denver, Colorado. Petitioners made the simultaneous filing at these three different offices upon the doubt that the interpretation of the Board would be according with the 8CFR3.8(b). However, the Order of the Court was that the Motion to Reopen was filed before the Board. In front of that doubt, the most conservative criteria was to proceed to file the Petition to Reopen at the three indicated places, timely in each of them, that is May 6, 1982.

The Board of Immigration Appeals, of course, knowing that the grounds of technicality in the formality of the Motion were not solid to base their negative decision, decided also in areas of the analysis of Petitioner's hardship as well as Petitioner's statutory time for suspension of deportation. In as much as these two elements were perfectly decided by this Court in their Order of March 12, 1982, we conclude that the Board of Immigration Appeals is in flagrant opposition and resistance to the Order of this Court, previously mentioned.

This Court has jurisdiction over the Petition for review pursuant to Section 106(a) of the Immigration and Nationality Act (Act), 8 U.S.C. §1105a(a).

STATEMENT OF THE FACTS

The male petitioner is a 30-year-old native and citizen of Mexico. At deportation proceedings, he testified that he first entered the United States in the summer of 1972, but his suspension application states that he left the United States in March 1974 pursuant to an administrative grant of voluntary departure and returned on May 1, 1974. The female is a 33-year-old native and citizen of Mexico who entered the United States on May 1, 1974, with her husband.

The Petitioners have two United States citizen children born November 8, 1974 and February 9, 1979.

According with the Order of this Court, the Petitioners were granted 60 days from March 12, 1982, to file a proper motion to the Board in accordance with the controlling regulations which the Court noted to be 8 C.F.R. 3.2 and 8 C.F.R. 3.8.

Petitioners properly and timely filed the Motion to Reopen and for Suspension of Deportation which the Board denied in July 16, 1982 by a majority, Board member James P. Morris has abstained from consideration of this case.

The Motion was denied by the Board of Immigration Appeals without a previous hearing.

ARGUMENT

I. MOTION TO REOPEN WAS PROPERLY FILED.

On May 6, 1982, Petitioners in compliance with the Order of this Court entered in March 12, 1982 in *80-1619* among these same parties, simultaneously filed the same Motion to Reopen in the following three different places:

1. In the office of the Board of Immigration Appeals in Falls Church, Virginia. 22041.
2. In the office of the District Director of the Immigration and Naturalization Service in Omaha, Nebraska. 68201.
3. In the office of the U.S. Immigration Judge in Denver, Colorado. 80202.

This conservative approach by filing the same Petition in those three different offices at the same time was directed to prevent the possibility of denial of the Petition for the fact that it was not properly filed in the office pertinent in this case.

Therefore, the opinion of the Board regarding the place and time for the filing of this Motion must be reviewed by this Court upon consideration of the effective filing of the Motion regarding time and place.

Copy of said Motion to Reopen is hereby attached as Exhibit 1.

II. MR & MRS. RIOS-PINEDA HAVE MET ALL THE STATUTORY REQUIREMENTS OF GOOD MORAL CHARACTER, SEVEN YEARS OF CONTINUAL, PHYSICAL PRESENSE IN THE U.S. AND EXTREME HARDSHIP.

This Court, by its decision in Case No. *80-1619* entered, March 12, 1982 determined that appellant's specifically are persons who completed the seven years continuous presence in this country during the pendency of this case; just based in that completion of this requirement, their case should be reopened by the BIA.

However, the BIA denied the motion to reopen by its decision of May 30, 1980, now appealed, on the grounds that Mr. & Mrs. Ríos-Pineda's Case did not warrant any consideration upon the fact that they have completed the seven year time requirement of physical presence while pendency of the judicial review of their case.

The Board's decision makes little sense and is improper, in as much as it is punishing the aliens for the reason that they have exercised their constitutional rights of equal protection of the law *Sida* vs *INS*, 665 F.2d 850 (9th Circ. 1981), *Santana-Figueroa* vs *INS*, 644 F2d 1354, 1357 (9th Circ. 1981), *Pérez* vs *INS*, 643 F. 2d 640, 641 (9th Circ. 1981).

III. The Board has denied appellant's MOTION TO REOPEN FOR THE REASON THAT THEY HAVE NOT PROVEN THE STATUTORY REQUIREMENT OF EXTREME HARDSHIP.

Again, the BIA has disregarded the opinion of this court expressed in the order entered March 12, 1982 Case No. *80-1619*, in as much as said decision specifically weighted the equitable factor which entitled the aliens in this case with the requirement of extreme hardship, which are: the fact that the Ríos-Pineda family included two school age American children who would be in fact deported if their parents were deported. Consequently, those two American children will be forced to discontinue their education at the level offered in their country, with the discontinuance of the study in the reading and writing of their official English language and will be forced to lose the health and welfare

protections to which they are entitled but not available in their parents' country of Mexico. Moreover, the psychological impact and cultural difference when Ana Belia (8 years old) and Brenda Lee (4 years old), be transplanted at their ages to a country totally unknown for them, will be a case of extreme hardship.

Specifically, the court in its decision of March 12, 1982 Case No. *80-1619*, stated as follows:

> "Here, Bernard and Estarnilada have been physically present in the United States continuously since May 1, 1974. Our review of the record indicates that Bernardo, in addition to being a homeowner in Omaha, has been gainfully employed at Union Packing since May of 1974. Both of Bernardo and Estarnilada's children, Ana Belia and Brenda Lee, were born in Omaha and have resided there since birth."

Appellants to prove the extreme hardship of Mr. & Mrs. Ríos' American children, introduced to the BIA as evidence the following:

1. Birth certificate of Ana Belia in Omaha, Nebraska.
2. Birth certificate of Brenda Lee in Omaha, Nebraska
3. Report c[illegible]d from the Omaha Public School regarding Ana Belia and Brenda Lee Ríos.

The BIA in the appealed decision of July 16, 1982 specifically recognized the evidential elements introduced with the Motion to reopen by appellants, however concludes that the extreme hardship does not exist in this case with abuse of discretion. *Sida vs. INS*, 665 F.2d 851 (9th Circ. 1981). *Tong-Chen* v. *Att. General*. F. Supp. DDC., C.A. N°82-0010, Aug. 13, 1982.

CONCLUSION

The decision entered in this case by the BIA denying the motion to reopen, filed by appellant is in violation of 8USC-Sec. 1254(a)(1) and therefore was improperly denied. The motion was timely filed, following the order of this court in Case No. *80-1619*, upon the grounds that appellants, Mr. & Mrs. Ríos-Pineda and their two children, Ana Belia and Brenda Lee, are persons of good moral character. Mr. & Mrs. Ríos-Pineda have been in the country continuously

present without interruption for seven years and their American children will be suffering a notorious extreme hardship if they are transplanted to an unknown country with a different educational, cultural level, with lower standards in life condition and with the psychological impact of said transplantation of their particular ages.

Respectfully submitted,

/s/ Román de la Campa

ROMÁN DE LA CAMPA
2219 Allan Street
Sioux City, Iowa 51103

No. 82-1894

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BERNARDO RIOS-PINEDA AND ESTARNILADA RIOS-PINEDA,
PETITIONERS,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT.

PETITION FOR REVIEW OR ORDER OF
THE BOARD OF IMMIGRATION APPEALS

REPLY BRIEF

STATEMENT OF THE ISSUES

Petitioners' Motion to Reopen, filed on May 6, 1982 according with the Order of this Court entered on March 12, 1982 in the Case *No. 80-1619* among the same parties herein, was erroneously denied by the Board of Immigration Appeals on July 16, 1982 with the abstention of Board member James P. Morris.

ARGUMENT

I. MOTION TO REOPEN WAS PROPERLY FILED

The BIA erred when expressing that the Motion was filed after the 60 days granted by this Court. This mistake is corroborated by the fact that the Motion was filed on May 6, 1982 by U.S. mail in Sioux City, Iowa, which date was only 54 days after March 12, 1982. The same day a proper distribution of copies of the Motion were sent to all the parties concerned in this case, that is the U.S. District Director of Immigration at Omaha, Nebraska; the U.S. Immigration Judge Jesse M. Sellers in Denver, Colorado; and Mr. Lawrence Lippe Attorney of Record of the Respondent in this case before this Court.

To corrobate the time and the form when this Motion was filed, we respectfully request to the Court to see the page number 1 of the Exhibit #1 of our Appeal Brief which expressed in the first line the following:

"Submitted by certified mail May 6, 1982."

In addition, an Affidavit expressing by the undersigned Attorney the time and the form that the Motion was filed is attached to this Reply Brief as Exhibit A.

Moreover, the BIA in their decision of July 16, 1982 which review is requested in this case on page 2 expressed as follows:

> "We are consequently unable to determine the actual date on which the motion was mailed."

Consequently, the Board was in doubt at this point with their previous statement that the Motion was not filed in a timely manner. Reasonably, the BIA did not rely on this formalistic detail to base their decision, when saying on page two:

> "Even were the motion properly filed, we would conclude that the respondents have not made a prima facie showing of extreme hardship to establish eligibility for suspension of deportation."

II. THE BOARD OF IMMIGRATION APPEALS ERRED IN DENYING TO MR. AND MRS. RIOS EXTREME HARDSHIP

In considering the request of extreme hardship, the BIA has ignored the decision of this Court in the previous action among the parties herein when this Court expressed:

> "Here, Bernardo and Estarnilada have been physically present in the United States continuously since May 1, 1974. Our review of the record indicates that Bernardo, in addition to being a homeowner in Omaha, has been gainfully employed at Union Packing since May of 1974. Both Bernardo and Estarnilada's children, Ana Belia and Brenda Lee, were born in Omaha and have resided there since birth."

CONCLUSION

The BIA has not given careful and thorough consideration to the Motion to Reopen filed by Petitioners in violation of: *INS v. Jong Ha Wang*, 450 U.S. 139, 140-141 & n.3 (1981) and *Prapavat v. INS*, 662 F.2d 561 (9th Cir. 1981).

Therefore, the decision of the BIA must be reviewed by this Court and the case must be remanded to the BIA for the purpose that this Motion filed by Petitioners be given proper consideration according with the decision entered in Ríos-Pineda v. INS (*80-1619, U.S. Circuit of Appeals, Eighth Circuit*).

Respectfully submitted,

/s/ Román de la Campa

ROMAN DE LA CAMPA
Attorney for Petitioners
2219 Allan Street
Sioux City, Iowa 51103

TO THE BOARD OF IMMIGRATION APPEALS

BERNARDO RIOS-PINEDA, A 22 733 395, HUSBAND, AND ESTARNILADA RIOS DE RIOS, A 22 733 397, WIFE, PETITIONERS,

MOTION TO REOPEN & CLAIM FOR SUSPENSION OF DEPORTATION

Submitted: by certified mail May 6, 1982

According with the decision of the United States Court of Appeals for the Eight Circuit in case No. 80-1619, filed March 12, 1982, Petitioners herein expresses to the Board as follows:

1. That in compliance with the decision above-expressed and during the 60 days period allowed by the Court, Petitioners herein file this "Motion to Reopen" this case upon the following facts:

(a) Because the 7 years statutory requirement to qualify for Suspension of Deportation pursuant to 8 U.S.C. 1254(a), which had not have elapsed when the original decision was entered by the Immigration Judge the Honorable Jesse M. Sellers on August 29, 1980, (see exhibit #1 attached), has elapsed at the time of the filing of this Motion, that is, May 7th, 1982 (see exhibit #2 attached).

In effect, on page 2 of the decision above-expressed of the U.S. Courts of Appeals, (see exhibit #3), Petitioners entered on May 1, 1974, in the United States. Since that time they have been continuously residing in the U.S. Therefore the 7 years statutory requirement is the new fact in which Petitioners base this motion to Reopen.

(b) Considering the other requirements of the Law, it is hereby added that Petitioners are persons of immaculate conduct, moral character and work records. Please see exhibits attached to 2, that is: Statement from employer, income tax returns 1974, 75, 76, 77, 78, 80, and 81, plus the real state contract purchasing petitioner's homestead.

(c) Finally the extreme hardship that Petitioner's only 2 U.S. citizens children will suffer is corroborated by exhibits

attached to exhibit 2, they are: birth certificate of Ana Belia (7) and Brenda Lee (3) both born and raised in Omaha, Nebraska, never having visited any other country. The oldest girl Ana Belia with her education in U.S. schools only (see attached school report in exhibit 2).

In effect Ana Belia Ríos and Brenda Lee Ríos will suffer extreme hardship if their parents are deported, because, due to their ages (7 and 3 years old) will not be reasonable to stay along in this country separated from their parents. Deporting with their parents will deprive them of their citizens rights, which are among others to receive their education in American Schools, which in the case of Ana Belia who has already 3 years in American Schools, will be to interrupt said education, only in the English language, then going to re-start said education in Mexican Schools in the Spanish language, retarding her educational process at a very critical time.

Moreover, the extreme hardship of Petitioners will be also psychological; when considering their inability to enjoy in Mexico the standards they have in 8 years of their life in the United States, according with their financial possibilities as well as their low skills and educations. This psychological effect will be worst in petitioner's two U.S. citizens minor daughters who will be deprived of all social assistance which they might utilize if needed from the United States, if they were living in their country.

2. Moreover, neither the Immigration Judge, or this Board, in the decision of this case have objected to these other requirements regarding moral character and extreme hardship.

3. Finally, the decision of the U.S. Court of Appeals, in this case (see copy attached) in the following paragraph which we are quoting, by implication, is accepting that petitioner's hardship is extreme, by saying:

> "Here, Bernardo and Estarnilada have been physically present in the United States continuously since May 1, 1974. Our review of the record indicates that Bernardo, in addition to being a homeowner in Omaha, has been gainfully employed at Union Packing since May of 1974. Both Bernardo and Estarnilada's chil-

dren, Ana Belia and Brenda Lee, were born in Omaha and have resided there since birth."

THEREFORE, petitioners request that the Board, gives consideration to this motion to reopen with exhibits, and fees, ordering that petitioners are entitled to suspension of deportation under 8 U.S.C. Section 1254(a)(1).

Respectfully submitted,

/s/ Román de la Campa

ROMÁN DE LA CAMPA
Petitioner's Attorney of Records
2219 Allan Street, Sioux City, Iowa 51103
712-258-8852

Copies to:

1) U.S. Department of Immigration
106 S. 15th Street, Omaha, Nebraska 68102

2) Honorable Jesse M. Sellers
1787 Federal Office Building
Denver, Colorado 80202

3) Lawrence Lippe, Chief
General Litigation and Legal Advice Section
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530

~~EXHIBIT 2~~

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form approved.
OMB No. 43-R0424

File No. A 28 733 [illegible]

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

FEE STAMP

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my CHILDREN ANA BELIA RIOS (7) and BRENDA LEE RIOS (3)
(Husband, wife, father, mother, son, daughter, child, children)

who ~~am/are~~ {☒ citizen(s) ☐ lawful permanent resident(s)} of the United States, and I have been physically present in the United States without any absence since MAY 1, 1974

(2a) My present true name is: (First, Middle, Last)					(2b) My name given at birth was.
BERNARDO RIOS-PINEDA					SAME
(3) I have been known by the additional names	My sex is	(Height)	(Color of eyes)	(Color of hair)	(Complexion)
NONE	MALE	5'4"	BLACK	BLACK	DARK
(4) I was born at (Place and country)	on (Month) (Day) (Year)	My nationality is (Country of which citizen or subject)			
S. Jose de la Boca, DURANGO - MEXICO	FEB - 20 - 51	MEXICAN			
(5) I now reside at (Apt. number and/or in care of)	(Number and street)	(City or town)	(State)	(ZIP Code)	
5242	So. 17th St.	OMAHA	NEB	68107	

(6) I first entered the United States under the name of (First) (Middle) (Last)	on (Month) (Day) (Year)	At (seaport, airport, or land border port)
BERNARDO RIOS-PINEDA	6 -- 1971	TIJUANA - CALIFORNIA
Name of vessel or other means of conveyance	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other)	
NONE	VISITOR	
For a period of time to expire (Insert date or period for which admitted)	My last extension of stay in the United States expired on (date)	
NONE	N/A	

If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible.
CROSSING THE BORDER CLOSE TO TIJUANA

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates. (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
PORT	DATE (Month-Day-Year)	PORT	DATE (Month-Day-Year)	
TIJUANA - CALIFORNIA	3 -- 74	TIJUANA - CALIFORNIA	5 74	NO

(7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

STREET AND NUMBER - CITY OR TOWN - STATE (Include number of hotel room, furnished room or apartment in present address)	FROM-		TO-	
	Month	Year	Month	Year
5242 So. 17th St. Omaha NEB	6	75	PRESENT	
4607 So 33rd St. Omaha Neb	4	75	6	75
GENERAL DELIVERY Omaha Neb	5	74	4	75
GENERAL DELIVERY Mexicali B.C.	6	71	5	74
LOS BANOS, S. JOSE - DURANGO - MEXICO	5	70	6	71

(Use a separate sheet for additional entries)

Form I-256A
(Rev. 12-7-77)N

(8) During my residence at the places in the United States named above I was employed by the following-named persons or firms: (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From– Month	From– Year	To– Month	To– Year
UNION PACK. CO. of OMAHA	4501 So. 36 St. OMAHA	$7.00	LABOR	MAY	74	PRESENT	
RESTAURANT OVER CROSS	CHICAGO - ILLINOIS	$64.00	LABOR	1	73	5	74

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom _____

(10) I ☒ AM ☐ AM NOT MARRIED | If married, the name of my spouse is ESTARNILADA RIOS | We were married on (Month) (Day) (Year) AUG 30 71 | at (City or town) (State or country) S. José de la Boca DURANGO - MEXICO

My spouse was born at (City or town) (State or country) San José de la Boca - DURANGO - MEXICO | on (Month) (Day) (Year) MAY-7-49 | and is a citizen of (Country) MEXICO

(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town) TIJUANA - CALIFORNIA | on (Month) (Day) (Year) MAY-1-74 | ☐ was ☒ was not admitted for permanent residence.

She or he was naturalized on (Month) (Day) (Year) NO | (Place naturalized) NONE

(12) I ☐ have ☒ have not been previously married: (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) _____

(13) My present spouse ☐ has ☒ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) _____

(14) My spouse ☐ is ☒ is not employed. If employed, give salary and name and address of place of employment _____

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse):

Cash, Stocks and Bonds	$ 1,000.00	Cash, Stocks and Bonds	$ ———
Real Estate	$ 12,000.00	Real Estate	$ ———
Other (Describe) HOUSEHOLD	$ 1,000.00	Other (Describe) CAR	$ 1,500.00
Total	$ 14,000	Total	$ 1,500.00

(16) I have 2 children. Give information requested in each column:

	Name	Age	Place of Birth	Now Residing at–	Citizen of	Lawful Permanent Resident of U.S.
1)	ANA BELIA RIOS	7	OMAHA-NEB	OMAHA-NEB	U.S.A	———
2)	BRENDA LEE RIOS	3	OMAHA-NEB	OMAHA-NEB	U.S.A	

The names, assets, and earnings of my children in the United States who have separate incomes are: NONE

(17) I ☐ have ☒ have not after entry into the United States acquired the status of an exchange alien.

(18) I ☐ have ☒ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality Act.

(19) I ☐ have ☒ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received _____

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) N/A

Date and place of entry on duty _____. Date of discharge _____.

Type of discharge (honorable, dishonorable, etc.) _____. I served in active duty status from _____ to _____.

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☐ No ☒

If "Yes," give date, Selective Service number, local draft board number and your last draft classification. _____

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☒

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒

(23) Have you ever left the United States or the jurisidiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☒

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization.

None

(25) I ☐ have ☒ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following _____

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☒ Birth ☐ Nationality ☐ Last Residence without fear of persecution.. If unable to return to any (Check the appropriate block or blocks)

of these countries, give reasons _____

(27) I ☒ would ☐ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain: _____

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States; otherwise show only country.

Name	Relationship To Me	Now Residing At	Birthplace	Citizen Of	Lawful Permanent Resident of U.S.?
Jose Rios	FATHER	MEXICO	MEXICO	MEXICO	NO
GUADALUPE RIOS	MOTHER	MEXICO	MEXICO	MEXICO	NO

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:

Cash, Stocks and Bonds	$_____
Real Estate	$_____
Other (Describe)	$_____
Total	$_____

Assets of mother consist of the following:

Cash, Stocks and Bonds	$_____
Real Estate	$_____
Other (Describe)	$_____
Total	$_____

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which *must be attached.*)

Nature of Document

1. MY BIRTH CERTIFICATE
2. MY MARRIAGE CERTIFICATE
3. " 2 CHILDREN BIRTH CERTIFICATES
4. " OLDER CHILD SCHOOL-CARD
5. " LETTER of EMPLOYMENT
6. " INCOME TAXES FOR 1981-80-79-78-76-75 & 74
7. " PHOTOS
8. " FEES
9. " REAL ESTATE CONTRACT PURCHASING HOMESTEAD.

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered ( ) to ( ), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name: So Help Me God.

Leonardo Rios
(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above-named applicant at _____
this _____ day of _____, 19_____

_____
Immigration Judge

EXHIBIT J-2

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form approved.
OMB No. 43-R0324

File No. A22 733 397

FEE STAMP

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my CHILDREN ANA BELIA RIOS (7) and BRENDA LEE RIOS (3)
(husband, wife, father, mother, children)

who is/are ☒ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States without any absence since MAY 1, 1974

(2a) My present true name is: (First, Middle, Last) ESTARNILADA RIOS				(2b) My name given at birth was: ESTARNILADA RAMOS	
(3) I have been known by the additional names: ESTARNILADA RAMOS de RIOS	My sex is FEMALE	(Height) 5' 8"	(Color of eyes) BLACK	(Color of hair) BLACK	(Complexion) DARK
(4) I was born at (Place and country) S. José de la Boca, Durango-MEXICO	on (Month) (Day) (Year) MAY-7-49	My nationality is (Country of which citizen or subject) MEXICAN			
(5) I now reside at (Apt. number and/or in care of) 5242 So. 17th. St.	(Number and street) OMAHA	(City or town) NEB	(State) 68107	(ZIP Code)	

(6) I first entered the United States under the name of (First) (Middle) ESTARNILADA RAMOS de RIOS (Last)	on (Month) (Day) (Year) MAY-1-74	At (seaport, airport, or land border port) TIJUANA-CALIFORNIA	
Name of vessel or other means of conveyance NONE	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other) NONE		
For a period of time to expire (Insert date of period for which admitted) NONE	My last extension of stay in the United States expired on (date) N/A		
If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible CROSSING THE BORDER CLOSE TO TIJUANA			

Since th date of my first entry I departed from and returned to the United States at the following places and on the following dates: (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
Port	Date (Month-Day-Year)	Port	Date (Month-Day-Year)	
NONE DEPARTURE	—	NONE	—	—

(7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

Street and Number-City or Town-State (Include number of hotel room, furnished room or apartment in present address.)	From- Month	From- Year	To- Month	To- Year
5242 So. 17th. St.- OMAHA NEB 68107	6	78	PRESENT	
4607 So 22th St.- OMAHA NEB	4	75	6	78
Several APPARTMENTS OMAHA NEB	5	74	4	75
LOS BRAZILES, S. JOSE DURANGO MEXICO	5	72	5	74

(Use a separate sheet for additional entries.)

Form I-356A
(Rev. 12-7-77)N

BEST AVAILABLE COPY

(8) During my residence at the places in the United States named above I was employed by the following-named persons or firms: (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From— Month	From— Year	To— Month	To— Year
NONE				MAY	74	PRESENT	
ONLY HOUSEWIFE	WORKING IN MY HOME						

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom _____

(10) I ☒ AM ☐ AM NOT MARRIED. If married, the name of my spouse is BERNARDO RIOS. We were married on (Month) (Day) (Year) AUG-30-71 at (City or town) S. José de la Boca (State or country) DURANGO, MEXICO.

Whether he was born at (City or town) S. José de la Boca - Durango - MEXICO (State or country) on (Month) (Day) (Year) AUG-30-71 and is a citizen of (Country) MEXICO

(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town) TIJUANA-CALIFORNIA on (Month) (Day) (Year) 6- 71 ☐ was ☒ was not admitted for permanent residence.

was naturalized on (Month) (Day) (Year) none (Place naturalized) none

(12) I ☐ have ☒ have not been previously married: (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) _____

(13) My present spouse ☐ has ☒ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) _____

(14) My spouse ☒ is ☐ is not employed. If employed, give salary and name and address of place of employment $2.00 per hour - UNION PACKING CO. of OMAHA. - 4501 So. 30th St. OMAHA. - NEB. -

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse):

Cash, Stocks and Bonds	$ —	Cash, Stocks and Bonds	$ 1,000.00
Real Estate	$ —	Real Estate	$ 12,000.00
Other (Describe) Car	$ 5,000.00	Other (Describe) household	$ 1,000.00
Total	$ 5,000.00	Total	$ 14,000.00

(16) I have 2 children. Give information requested in each column:

Name	Age	Place of Birth	Now Residing at—	Citizen of	Lawful Permanent Resident of U.S.
1) ANABELIA RIOS	7	OMAHA. NEB	OMAHA. NEB	U.S.A.	—
2) BRENDA LEE RIOS	3	OMAHA. NEB	OMAHA. NEB.	U.S.A	—

The names, assets, and earnings of my children in the United States who have separate incomes are: NONE

(17) I ☐ have ☒ have not after entry into the United States acquired the status of an exchange alien.

(18) I ☐ have ☒ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality

(19) I ☐ have ☒ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received _____

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) NO

Date and place of entry on duty _____. Date of discharge _____.

Type of discharge (honorable, dishonorable, etc.) _____. I served in active duty status from _____ to _____.

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☐ No ☒

If "Yes," give date, Selective Service number, local draft board number and your last draft classification. _____

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☒

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒

(23) Have you ever left the United States or the jurisidiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☐

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization:

NONE

(25) I ☐ have ☒ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following _____

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☒ Birth ☐ Nationality ☐ Last Residence without fear of persecution. If unable to return to any of these countries, give reasons _____

(Check the appropriate block or blocks)

(27) I ☒ would ☐ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain: _____

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States; otherwise show only country.

Name	Relationship To Me	Now Residing At:	Birthplace	Citizen Of	Lawful Permanent Resident of U.S.?
ROSARIO RAMOS	Father	MEXICO	MEXICO	MEXICO	—
HILARIA RAMOS	MOTHER	MEXICO	MEXICO	MEXICO	—

IF THIS APPLICATION IS BASED) HARDSHIP TO A PARENT OR PAREN' QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country _____

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:

Cash, Stocks and Bonds	$
Real Estate	$
Other (Describe)	$
Total	$

Assets of mother consist of the following:

Cash, Stocks and Bonds	$
Real Estate	$
Other (Describe)	$
Total	$

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which must be attached.)

Nature of Document

1. MY BIRTH CERTIFICATE
2. " MARRIAGE CERTIFICATE
3. " 2 CHILDREN BIRTH CERTIFICATE
4. " OLDER CHILD SCHOOL-CARD
5. " PHOTO
6. " FEES
7. INCOME TAXES FOR 1981-80-79-78-77-76-75 & 74
8. " REAL ESTATE CONTRACT PURCHASING HOMESTEAD

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered ( ) to ( ), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name: So Help Me God.

Estanislada Rios
(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above-named applicant at _____

this _____ day of _____, 19_____

_____
Immigration Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 80-1619

BERNARDO RIOS-PINEDA AND
ESTARMILADA RAMOS DE RIOS
I&NS# A22-733-395/397.
PETITIONERS.

vs.

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICES
RESPONDENT

PETITION FOR REVIEW OF ORDER
ENTERED BY THE BOARD OF IMMIGRATION APPEALS

BRIEF OF PETITIONERS

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I.

LACK OF SUBSTANTIAL, REASONABLE EVIDENCE TO SUPPORT THE ADMINISTRATION DECISIONS.

II.

ERRORS OF LAW. (BASED ON AN INCORRECT INTERPRETATION OF LAW)

STATEMENT OF THE CASE

The parties seeking review are husband and wife. Both of them are presently in the United States territory at this time.

The Respondent is the Immigration and Naturalization Services with seat in Omaha, Nebraska.

The decisions which reviews are requested in this Petition are those entered by the Board of Immigration Ap-

peals on May 30, 1980 regarding the Petitioners, in which decisions an order was entered, as wit:

ORDER: The appeal is dismissed.

The Board of Immigration Appeals in this case upheld the decision entered in this case by the Honorable Immigration Judge, and therefore the following violations of law have been committed:

1. That the decision in the case was based only on the respondent's testimony, which was obtained without advising him of his right to remain silent;

2. That at the time of the trial he was in "custody", and his appearance was "mandatory, not voluntary";

3. That the Immigration Judge's decision violated the "Miranda Rules" and is consequently a "flagrant violation" of the 4th Amendment to the United States Constitution.

I.

LACK OF SUBSTANTIAL, REASONABLE EVIDENCE TO SUPPORT THE ADMINISTRATIVE DECISIONS.

The Honorable Immigration Judge in this case, at the time he interrogated petitioners, he failed prior to ask any questions, to give the "Miranda Warnings", with flagrant violation of the case of *Miranda* v. *Arizona*, 384 U.S. 436 (1966). All the evidence in this case is limited to the interrogation of Petitioners, therefore, following the rules of the "fruits of the poisoned tree", the evidence obtained must be excluded in this case.

II.

ERRORS OF LAW. (BASED ON AN INCORRECT INTERPRETATION OF LAW)

Petitioners are the parents of two American children named Ana Belia Ríos (6) and Brenda Lee Ríos (1). Two birth certificates are hereby attached as Exhibit A & B.

The appeal decision clearly affected the life of beneficiaries' daughters who are American Citizen by birth. They both were born in Omaha, Nebraska, respectively on 11-8-74 and 2-9-79. The former will interrupt her education in her country if her parents were deported.

Mr. and Mrs. Ríos deportation, will be a de-facto deportation of their two children U.S. citizens, which is repug-

nant to our legal and constitutional system. (*Acosta* v. *INS*, U.S. Dist. Court, NJ Case No. 76-709; Fitte 28 U.S.C. Sec 2201; cf. Wright Federal Courts Sec 100-449). (5 U.S.C. sec 706(2)(B) *Aalund* v. *Marshall* 461 F2d 710, 714 (5th Cir. 1972). *Gonzalez Cuevas* v. INS, 515 F2d, 1222, 1224 (5th Circuit).

According with *Transmittal Memo No. 89, INS September 20, 1978*, deferred action OI 103.1(a)(ii), has been modified to add "undue hardship" to the criteria which may be considered in determining whether a case shall be recommended for deferred action on Form G-312.

III.

The Honorable Immigration Judge has erred in the application of the Immigration Law by holding that the main Petitioner, Mr. Bernardo Ríos, who has been a resident of the U.S. for more than 7 years has not been continuously physically present in the U.S. for the required period of seven years because of a very nonmeaningful interuption in 1974. With this interpretation, the decision has violated the case of *Fleuti* v. *Rosenburg* 374 U.S. 449, L. ED 2nd. 1000, 83 S. CT. 1804 (1963).

CONCLUSION

Petitioners Mr. and Mrs. Bernardo Ríos with more than seven years of residency in the U.S. as honorable members of our labor force, with an immaculate conduct, head of an exemplary family, must be recognized as persons whose deportations should be suspended according with Section 244 of the INA (8 U.S.C. 1254).

Moreover, Petitioners' children Ana Belia Ríos (6 years old) and Brenda Lee Ríos (1 years old) will be deprived of their U.S. Citizenship as a derivative inevitable effect if deportation of their parents were sustained by this Court.

Therefore, it is respectfully requested that this honorable Court in review of the appealed decision, order that deportation against petitioners be suspended.

Respectfully submitted,

/s/ Román de la Campa

ROMÁN DE LA CAMPA
2219 Allan St.
Sioux City, IA 51103
PH: (712) 258-8852
Attorney for Petitioners

Certified 11-29-80
/s/ Román de la Campa

ROMÁN DE LA CAMPA

TO THE UNITED STATES COURT OF APPEALS
FOR THE 8TH CIRCUIT

No. 80-1619

BERNARDO RIOS-PINEDA, A22 733 395, HUSBAND
ESTARNILADA RAMOS DE RIOS, A22 733 397, WIFE
PETITIONERS

vs.

U.S. DEPARTMENT OF JUSTICE, IMMIGRATION
AND NATURALIZATION SERVICE,
IMMIGRATION AND NATURALIZATION SERVICES,
OMAHA, NEBRASKA.
RESPONDENTS

PETITION FOR REVIEW

(Filed July 16, 1980)

COMES NOW PETITIONERS, and expressed to the Court:

The parties seeking review are 2 members of the Rios family, husband and wife. Both are presently in the United States territory.

The Respondents are 1) the U.S. Department of Justice, Immigration and Naturalization Service and 2) the Immigration and Naturalization Services with seat in Omaha, Nebraska.

The decision which review is requested in this Petition is that entered by the Board of Immigration Appeals on May 30, 1980 regarding the Petitioners' appeal from a decision of the Immigration Judge dated December 12, 1978 in which decision an order was entered, as wit:

"ORDER; The appeal is dismissed."

The decision which review is here requested, is a final order reviewable only by way of direct review of the United States Court of Appeals via a Petition for Review, accord-

ing with the construction of Section 242(b) of the INA (8 U.S.C. 1252) and *Shaughnessy* v. *Pedreiro*, 349 U.S. 48, 75 S.Ct. 591, 99L. Ed. 898 (1955).

SCOPE OF REVIEW

It is respectfully requested that this Honorable Court review the order above mentioned as to the following three issues:

I

a) Lack of substantial, reasonable evidence to support the administrative decision.

II

b) errors of law. (based on an incorrect interpretation of law).

III

c) unfair procedure. (Constitutional issues).

PREVIOUS JUDICIAL PROCEEDINGS

It is herein expressed by Petitioners, that the order requested for review has not been previously upheld in any previous judicial proceedings.

According with Rule 15(a) Federal Rules of Appellate Procedure, for this Petition a short form has adopted by Petitioners herein. The main issue to review, will consist in the suspension of deportation denied to petitioners because of their physical presence. However, any and all the items of defense alleged before the U.S. Immigration Judge, and denied in the decision herein requested for review, must be subject to said review by the Honorable Court.

THEREFORE, Petitioners pray that the orders abovementioned issued by the Board of Immigration Appeals, be reviewed by this Honorable Court, regarding the three scopes referred above and regarding all the issues raised in said orders, within the jurisdiction of this Court, in which Petitioners are resident. That said orders must be reversed and remanded to the Immigration and Naturalization Service, with the findings that Petitions are entitled to suspen-

sion of the petition due to their residence in United States territory for more than 7 years.

/s/ Roman de la Campa

ROMAN DE LA CAMPA
Attorney for Petitioners
2219 Allan St.
Sioux City, Iowa 51103
Phone: 712/258-8852

Subscribed and sworn to before me, Sioux City, Iowa, JULY 14, 1980.

/s/ _____
Notary Public.

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

Immigration and Naturalization Service
1008 Federal Office Building
106 South 15th Street
Omaha, Nebraska 68102

File No. A 22 733 395
A 22 733 397

In the Matter of:
Mr. Bernardo Rios-Pineda
and
Mrs. Estarnilada Ramos de Rios
5242 South 17th Street
Omaha, Nebraska 08107

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated December 12, 1978, in the above entitled case.

2. Briefly, state reasons for this appeal.

A. The Appealed decision clearly affected the deportation of beneficiaries' infant daughter who is an American citizen: Ana Belia-Ríos, who was born in the city of Omaha, state of Nebraska, U.S.A. on November 8, 1974, therefore 4 years old. This is contrary to constitutional right of said American citizen because she will be forced to leave with her parents.

B. Violation of Section 2-12(C) of the Immigration Law, because Mr. Ríos has resided in the U.S. for a continual period of 7 years and is entitled to apply for a waiver of excludability.

C. Because Form I-114 has been filed before the Immigration Office and Forms MA-50 A and B are already filed before the Nebraska Labor Department pending decision.

D. Because Mrs. Ríos is pregnant at the present time and the expected date of confinement is January 15, 1979. Reasonably, she should not travel.

3. I do desire oral argument before the Board of Immigration Appeals in Washington, D.C.

4. I am filing a separate written brief or statement.

/s/ Bernardo Rios
BERNARDO RIOS
Signature of Appellant (or attorney or representative)

/s/ Estarnilada Rios
ESTARNILADA RIOS

/s/ Roman de la Campa
ROMAN DE LA CAMPA

DECEMBER 20, 1978

Roman de la Campa
Attorney at Law
2219 Allan St.
Sioux City, Iowa 51103

Board of Immigration Appeals

File No. A22 733 395
A22 733 397

In the matter of
Mr. Bernardo Ríos-Pineda
and
Mrs. Estarnilada Ramos de Rios
5242 South 17th St.
Omaha, NE 68107

BRIEF OF STATEMENT

I

The order of deportation in this case is contrary to the U.S. Constitution Equal Protection Rights with respect to the infant daughter of beneficiaries, Ana Belia-Ríos, in that she will be forced to leave with her parents.

II

Beneficiaries' daughter, Ana Belia-Ríos, a 4-year old girl will be affected, deprived of the benefits of her American citizenship if her parents are deported, specifically the right to have her parents with her in this country. Ana will suffer this detriment only because her parents are aliens, and therefore will suffer invidious discrimination on the basis of her national origin. This is a Fifth Amendment claim.

III

The Fourteenth Amendment of the U.S. Constitution, Section I, in relation to the Civil Rights Act of 1866, No. 14 Stat. 12-7; *U.S.* v. *Won Kim Ark*, 169 U.S. 649. A child born in the U.S. becomes a citizen of the U.S. As at birth, Ana Belia-Ríos became a citizen of the U.S., that citizenship must be deemed to continue unless her voluntary action which is not possible in this case due to her minority. The appealed decision however is a *de facto* deprivation of citizenship to her. This result is repugnant to the Constitution, by denying to Ana Belia-Ríos the right to remain in the U.S. A 4-year old girl cannot enjoy her educational, spiritual and economic benefits which our society affords unless she is with her parents.

IV

Beneficiaries in this case are law-abiding and self-supporting. They are also home owners and good members of this community. They have never committed any illegal or anti-social activity. Therefore, the appealed decision erroneously follows irrelevant standards instead of exercising its discretion under the applicable statute Section 2-12(C) of the Immigration Law upon the 7 years of residency in this country of the beneficiaries without any legal interruption.

V

Aliens have the right not to bear witness against oneself and not to incriminate themselves under the Fifth Amendment. *Kim* v. *Rosenburg*, 363 U.S. 405 (1960). In this instance case the Honorable Immigration Judge at the time of the hearing interrogated the beneficiaries; nevertheless, they specifically decline, with, violation of said principle.

VI

The order of Show-Cause in this instance instant case was issued extemporaneously, because at the time was pending by the Immigrations Director the decision in Form I-114 related to Forms MA 50A and B filed before the Nebraska Labor Department. This point raised at the time of the hearing was overruled by the Honorable Judge, which confirmed the Director order of Show-Cause and in that way invalidated the procedure including the decision appealed.

Respectfully submitted

/s/ Román de la Campa
ROMÁN DE LA CAMPA
Attorney for Appellants

Sioux City, IA DECEMBER 22, 1978

EXCERPT FROM HEARING BEFORE IMMIGRATION JUDGE

December 12, 1978

[87] IMMIGRATION JUDGE

Mr. de la Campa do I hear an application for voluntary departure in lieu of deportation?

ATTORNEY

Your honor, I'm going to submit to court the application that according to the discretion of (unint.) under the circumstances of the . . . the character and good conduct of the manner . . . of the . . . Mr. Rios and Mrs. Rios, and besides they have a son who is an American citizen, they are expecting another one who is going to be born here in about a month. (unint.) only on the point that the . . . Mr. Rios have been at the same employment in the city of Omaha at . . . at the Union Packing Company which has already filed application at the Immigration Office in Omaha to obtain him labor certificate. Now requesting a visa for him (unint.) and under the point that he is needed in that plant making a kind of (unint.) work there is not any other person in Omaha who can replace him. An um, also in consideration that Mr. Rios having a residence of the United States for a period of time of seven years that the Order of Deportation be . . . state [stayed??] until the time that we can prove the seven years residence or the visa petition be a . . . granted.

IMMIGRATION JUDGE

And what period of time are you asking for, sir?

[88] ATTORNEY

(unint.)

IMMIGRATION JUDGE

Until he gets affirmative relief approved?

ATTORNEY

That's okay, yeah.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

File No. A22 733 395

UNITED STATES OF AMERICA:

In the Matter of:
Bernardo Rios-Pineda
5242 S. 17th
Omaha, Nebraska, RESPONDENT

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Mexico and a citizen of Mexico,
3. You entered the United States at San Ysidro, California on or about May 1, 1974;
4. At that time you were not inspected by the United States Immigration Officer.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 1008 Federal Office Bldg., 106 South 15th Street, Omaha, Nebraska on November 14, 1978 at 9:00 am, and show cause why you should not be deported from the United States on the charge(s) set forth above.

/s/ _____
District Director, Omaha, Nebraska

Dated: OCTOBER 24, 1978

cc: ATTORNEY

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

ORDER TO SHOW CAUSE AND NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

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File No. A22 733 397

UNITED STATES OF AMERICA:

In the Matter of
Estarnilada Ramos de Rios
5242 S. 17th, Omaha, Nebraska

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of Mexico and a citizen of Mexico,
3. You entered the United States at or near San Ysidro, California on or about May 1, 1974;
4. At that time you were not inspected by the United States Immigration Officer.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a)(2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at 1008 Federal Office, Bldg., 106 15th Street, Omaha, Nebraska on November 14, 1978 at 9:30 am, and show cause why you should not be deported from the United States on the charge(s) set forth above.

/s/ _____
District Director, Omaha, Nebraska

Dated: OCTOBER 24, 1978

cc: Attorney

Supreme Court of the United States

No. 83-2032

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER,

v.

BERNARDO RIOS-PINEDA AND ESTARNILADA
RIOS-PINEDA DE RIOS

ORDER ALLOWING CERTIORARI. Filed December 3, 1984.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.